



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FIRST CLASS MAIL

FEB -3 2014

Jessie C. Fontenot, Jr.
Strauch Green & Mistretta, PC
530 N. Trade Street, #303
Winston-Salem, NC 27101

RE: MUR 6567
Bruce Peller

Dear Mr. Fontenot:

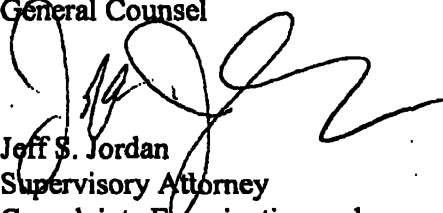
On May 7, 2012, the Federal Election Commission notified your client, Bruce Peller, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On January 16, 2014, based upon the information contained in the complaint, and information provided by your client, the Commission decided to dismiss the complaint and close its file in this matter. Accordingly, the Commission closed its file in this matter on January 16, 2014.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Donald E. Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

General Counsel

BY: 
Jeff S. Jordan
Supervisory Attorney
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Bruce Peller

MUR 6567

Bruce Peller for Congress and

Paula Andrea Henao as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed by John K. Motsinger, Sr. on April 30, 2012, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by Bruce Peller, Bruce Peller for Congress and Paula Andrea Henao as treasurer. It was scored as a low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

In this matter, the Complainant, John K. Motsinger, Sr., asserts that as of April 20, 2012, Bruce Peller, Bruce Peller for Congress (the "Committee")¹ and Paula Andrea Henao in her official capacity as treasurer, had failed to file a quarterly campaign report due on April 15, 2012, a statement of the Committee's organization, and a statement of Peller's candidacy, as required by the Act and underlying Commission regulations. Compl. at 1-2. The Complainant alleges that, as of the date of Complaint, Bruce Peller was a federal candidate because the Committee had made expenditures over \$5,000. Moreover, the Complainant asserts that Peller was not "testing the waters" because he filed with the North Carolina State Board of Elections as

¹ Peller was a candidate in North Carolina's fifth congressional district. The Committee was Peller's principal campaign committee.

1 a candidate, formally announced his candidacy, and otherwise held himself out as a candidate.²
2 See 11 C.F.R. §§ 100.72(b), 100.131(b). *Id.* at 1-2. Additionally, the Committee allegedly
3 received contributions over \$5,000 and failed to include a proper disclaimer on its yard signs by
4 failing to include a “[p]aid for by” statement. *Id.*

5 Treasurer Henao acknowledges that the 2012 April Quarterly report was past due but that
6 the Committee only discovered this fact on April 18, 2012. Resp. at 1. The Committee
7 “compiled and mailed [the report] the next day.”³ *Id.* Henao explains that Christopher Church
8 was the Committee’s treasurer prior to April 18, 2012 and that Church advised the Committee
9 that it “[was] in compliance and that no reports were past due.” *Id.* Henao further responds that
10 Church was fired for “writing unauthorized checks from the campaign checking account” and
11 “transferring money . . . to his personal banking account.” *Id.* The incident was reported to the
12 Winston-Salem Police Department. *Id.* Henao also notes that the Committee’s subsequent
13 reports had been timely and accurately filed. *Id.* Henao did not respond to the allegation that the
14 Committee’s yard signs lacked an appropriate disclaimer.

15 **B. Legal Analysis**

16 An individual becomes a candidate for federal office when he or she has received
17 contributions or made expenditures in excess of \$5,000. 2 U.S.C. § 431(2); 11 C.F.R. § 100.3
18 The Committee’s April 2012 Quarterly Report indicates that Peller exceeded the \$5,000

² Specifically, the Committee had an experienced campaign manager, a “professional [campaign] website,” it distributed “professional grade campaign literature and materials,” and had yard signs. Compl. at 1.

³ The Committee’s Statement of Organization and 2012 April Quarterly Report, and Heller’s Statement of Candidacy, were received by the FEC on April 24, 2012.

1 threshold on March 12, 2012.⁴ See April 2012 Quarterly Report of Receipts and Disbursements
2 (Apr. 24, 2012). Accordingly, Peller became a candidate under the Act on March 12, 2012 and
3 was required to designate a principal campaign committee and file his statement of candidacy
4 within 15 days. See 2 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1(a). In addition, the Committee was
5 required to file a statement of organization within ten days of that designation. 2 U.S.C. § 433;
6 11 C.F.R. § 102.1(a).

7 In reviewing the circumstances surrounding the delayed reporting, the Commission notes
8 that the Committee appears to have been misled by its former treasurer, and that the Committee
9 took prompt remedial action upon discovering that it was not in compliance with the
10 Commission's filing requirements. Indeed, the Committee filed its April quarterly report on
11 April 24, 2012—only nine days after the due date. The Committee also filed its statement of
12 organization, and Peller filed his statement of candidacy, on April 24, 2012. The alleged failure
13 to file reports, thus, was promptly corrected upon discovery. Based on the available information
14 and the circumstances presented here, the Commission does not believe that an investigation into
15 the reporting and disclaimer allegations would be an efficient use of the Commission's resources.
16 Accordingly, the Commission determines that further enforcement action is unnecessary, and
17 exercises its prosecutorial discretion and dismisses this matter pursuant to *Heckler v. Chaney*,
18 470 U.S. 821 (1985).

⁴ Peller filed as a candidate with the North Carolina State Board of Elections on February 28, 2012, and therefore was not testing the waters at this time. See 11 C.F.R. §§ 100.72(a); 100.131(a) ("Funds received solely for the purpose of determining whether an individual should become a candidate are not [contributions/expenditures]").